IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 26619 of 2003

Between:

1. G. Lakshmi Devi, W/o. Muniswamy, Bangals Bunk, Near RTC Bus Stand, Gooty.
2. Useni, S/o. Santanna, Soda Bunk, Gooty, Near RTC Bus Stand.
3. Mangala Kanibagiri, S/o. Naraganna, Barbar Bunk, Near RTC Bus Stand, Gooty.
4. S. Fakruddin, S/o. Hazeepeera, Soda bunk, Near RTC Bus Stand, Gooty.
5. Nabir Ased, S/o. Fakruddin, Flowers bunk, Near RTC Bus Stand, Gooty.

..... PETITIONERS

AND

1 The Depot Manager, APSRTC, Gooty Depot, Gooty, Ananthapur

District.
2 The State of A.P., rep. by its Secretary, GAD Department,

Secretariat, Hyderabad.
3 The District Collector, Ananthapur.
4 The Mandal Revenue Officer, Gooty, Ananthapur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or directions, more particularly a writ of Mandamus, declaring the action of the respondents No.1 and 4 to remove the wooden bunks which are situated in front of APSRTC Bus Stand, Gooty on the national High way No.7 road, without following due process of law, is illegal, arbitrary, unconstitutional

and without jurisdiction, consequently direct the respondent No.3 to consider the representation dated 18-6-2003 of the petitioners in terms of G.O.Ms.No. 560, GAD, dated 23.12.1997 and direct the respondents to provide alternative accommodation to the petitioners.

Counsel for the Petitioner:MR.K.V.SUBBA REDDY

Counsel for the Respondent No1.: MR.P.VINAYAKA SWAMY

(SC for APSRTC)

Counsel for the Respondent Nos.2 to 4: G.P.FOR REVENUE.

The Court made the following :

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ORDER:

Heard both sides and at the request of both the counsel, the main writ petition itself is taken up for final disposal.

The petitioners herein, who are running small business and are in possession of wooden bunks in front of the APSRTC bus stand at Gooty on the National Highway No.7, filed this writ petition, ***inter alia,*** challenging the action of the respondents herein seeking to evict them without following the procedure as contemplated under the law.

The case of the petitioners, in brief, is that they have been in possession of wooden bunks for the last 30 years and now, suddenly, the respondents are asking the petitioners to vacate them, and even though they filed a representation dated 18.6.2003, the same has not been considered and no orders have been passed. Hence, the writ petition.

In the counter-affidavit filed by the respondents herein, it is stated that the petitioners are in fact in illegal occupation and are encroachers on the road margin, for which they have no licence or permission granted by any of the respondents. Therefore, they cannot continue in possession of wooden bunks.

Having heard the learned counsel on either side and on perusal of the material on record, it is seen that admittedly, the petitioners are in possession of the wooden bunks for the last 30 years and they are doing business. It is not the case of the respondents that any notice was issued to the petitioners or proceedings were initiated against them for their removal. Further, it is also not the case of either side that at any point of time any licence, permission or any authorization has been

granted by any of the respondents herein. In view of the same, it is now well settled that even an encroacher cannot be evicted without following the proper procedure under law.

Accordingly, the writ petition is disposed of directing the respondents herein to take appropriate action in accordance with law after giving due notice and opportunity for removal of the petitioners. No costs.

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07-09-2004

To

1 The Depot Manager, APSRTC, Gooty Depot, Gooty, Ananthapur District.
2 The Secretary, GAD Department, the State of Andhra Pradesh, Secretariat, Hyderabad.
3 The District Collector, Ananthapur.
4 The Mandal Revenue Officer, Gooty, Ananthapur District.
5 Two CCs to the Government Pleader for Revenue , High Court Building, Hyderabad. (OUT)
6 Two C.D. copies.

sj/stv